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HOUSE BILL NO. 1065

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 16.1-243, 17.1-124, 17.1-224, 17.1-258.3, and 17.1-258.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-271.01 and by adding in Article 4.1 of Chapter 2 of Title 17.1 a section numbered 17.1-258.6, relating to electronic filing in circuit courts.

Patrons—Athey, Albo and Crockett-Stark

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-243, 17.1-124, 17.1-224, 17.1-258.3, and 17.1-258.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-271.01 and by adding in Article 4.1 of Chapter 2 of Title 17.1 a section numbered 17.1-258.6 as follows:

§ 8.01-271.01. Electronic filings in civil actions in circuit court.

Electronic filings in civil actions and proceedings in the circuit court shall be governed by Article 4.1 (§ 17.1-258.2 et. seq.) of Chapter 2 of Title 17.1 and applicable Rules of the Supreme Court of Virginia.

§ 16.1-243. Venue.

A. Original venue:

1. Cases involving children, other than support or where protective order issued: Proceedings with respect to children under this law, except support proceedings as provided in subdivision 2 of this subsection or family abuse proceedings as provided in subdivision 3 of this subsection, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides;

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city or county, (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships, (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ 16.1-241, 63.2-1233 and 63.2-1237, be commenced (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside; and

d. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Family abuse: Proceedings in which an order of protection is sought as a result of family abuse shall be commenced where (i) either party has his or her principal residence (ii) the abuse occurred or (iii) a protective order was issued if at the time the proceeding is commenced the order is in effect to protect the petitioner or a family or household member of the petitioner.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court

may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur only after adjudication in delinquency proceedings.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. *Records imaged from the original documents shall be considered original documents for purposes of the transfer of venue.* The transferor court may, in its discretion, retain ~~such~~ copies as it deems appropriate.

§ 17.1-124. Order books.

Except as otherwise provided herein, each circuit court clerk shall keep order books recording all proceedings, orders and judgments of the court in all matters, all decrees, and decretal orders of such court and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors, conservators and guardians shall be recorded, except when the same are appointed by the clerk of court, in which event the order appointing such administrators or executors, shall be made and entered in the clerk's order book. In any circuit court, the clerk may, with the approval of the chief judge of the court, by order entered of record, divide the order book into two sections, to be known as the civil order book and the criminal order book. All proceedings, orders and judgments of the court in all matters at civil law shall be recorded in the civil order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal order book. In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the civil order book of the court. The recordation prior to January 1, 1974, of all proceedings, orders, judgments and decrees in such cases, whether entered in the common-law order book or the chancery order book of any court, is hereby declared a valid and proper recordation of the same. Orders in cases appealed from the juvenile and domestic relations district courts shall be maintained as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

The clerk shall ensure that these order books have been microfilmed, or converted to, *or created in* an electronic format. Such microfilm and microphotographic processes and equipment shall meet state microfilm standards, and such electronic format shall follow state electronic records guidelines, pursuant to § 42.1-82. The clerk shall further provide the master reel of any such microfilm for storage in the Library of Virginia and shall provide for the secured, off-site back up of any electronic copies of such records.

§ 17.1-224. Copy of illegible instrument used for making permanent record.

In offices of clerks of courts of record in which instruments are recorded by any photographic *or electronic imaging* process, the clerk may, in the event any such instrument is in such condition that a perfect and legible record cannot be produced by such process, make and certify a copy of such instrument, for which he shall be entitled to such fees as are prescribed by law for making and

certifying copies of instruments, and use such copy for making permanent records of his office by such photographic *or electronic imaging* process. Such original instrument shall be preserved in the clerk's office, in the same manner as is prescribed by law for preserving wills.

§ 17.1-258.3. Electronic filing in civil or criminal proceedings.

A ~~clerk of circuit court may establish a~~ system for electronic filing in civil or criminal ~~actions that~~ *proceedings may be established and* shall be governed by ~~Rule 1:17 of~~ the Rules of *the* Supreme Court of Virginia. ~~The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to file documents electronically, specifying the electronic~~ *Electronic* filing procedures ~~to be followed, including, but not limited to,~~ *shall include* security procedures, as defined in the Uniform Electronic Transactions Act *(§ 59.1-479 et seq.),* for transmitting *signed or* notarized documents.

§ 17.1-258.4. Signature; when effective as original; notarization; seal.

A. If the electronically filed document contains an electronic signature pursuant to the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), any statutory requirement for original signature shall be deemed to be satisfied.

B. Any statutory requirement for a document to be notarized shall be deemed satisfied by the appropriately executed electronic signature of such notary pursuant to the Virginia Notary Act (§ 47.1-1 et seq.).

C. When a seal or stamp is required to be affixed by any court or clerk on a document, the attachment of an official electronic seal or official electronic stamp to the electronic document is sufficient. "Official electronic seal" and "official electronic stamp" mean an electronic image of a seal or stamp, respectively, of the court or clerk, which is produced by software applications authorized by the clerk that are protected by system credentials to which only the clerk or persons authorized by the clerk have access.

§ 17.1-258.6. Acceptability of electronic medium.

A. In connection with civil proceedings in circuit court, any statutory requirement for an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript shall be satisfied if such is in an electronic form approved for filing under the Rules of the Supreme Court. However, this section shall not apply to documents the form of which is specified in any statute governing the creation and execution of wills, codicils, testamentary trusts, premarital agreements, and negotiable instruments.

B. Notwithstanding any other provision of law, any statutory authorization for the use of copies or reproductions in civil proceedings in circuit court shall be satisfied by use of such copies or reproductions in hard copy or electronic form approved for filing under the Rules of the Supreme Court.

INTRODUCED